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State v. Corning Respondent's Brief Dckt. 43041

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43041
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR-2014-16
)	
BILLY DAN CORNING IV,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Corning failed to establish the district court abused its discretion by denying his Rule 35 motion for a reduction of his unified sentence of five years, with two years fixed, imposed upon his guilty plea to felony violation of a no contact order?

Corning Has Failed To Establish The District Court Abused Its Sentencing Discretion

Corning pled guilty to felony violation of a no contact order and the district court imposed a unified sentence of five years, with two years fixed. (R., pp.164-68.) Corning filed a timely Rule 35 motion for a reduction of sentence and for credit for time

served. (R., pp.170-81.) The district court denied the motion for reduction of sentence but granted the motion for credit for time served and entered an amended judgment of conviction to reflect the credit for time served. (R., pp.206-11.) Corning filed a notice of appeal timely only from the amended judgment of conviction. (R., pp.212-14.)

Corning asserts the district court abused its discretion by denying his Rule 35 motion for a reduction of sentence in light of his intention to attend NA and AA meetings and to open a business, support from a local pastor, his claim “his family and children needed him,” and because “the Department of Correction had not yet placed him in any sort of rehabilitative program.” (Appellant’s Brief, pp.3-6.) Corning has failed to establish an abuse of discretion.

If a sentence is within applicable statutory limits, a motion for reduction of sentence under Rule 35 is a plea for leniency, and this Court reviews the denial of the motion for an abuse of discretion. State v. Huffman, 144 Idaho, 201, 203, 159 P.3d 838, 840 (2007). To prevail on appeal, Corning must “show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion.” Id.

At sentencing, the district court articulated the correct legal standards applicable to its decision and also set forth in detail its reasons for imposing Corning’s sentence. (Tr., p.53, L.5 – p.56, L.25 (Appendix A).) Subsequently, at the hearing on Corning’s Rule 35 motion, the district court stated:

... [I]n light of the underlying facts and circumstances the court considered at the time, including the defendant’s prior history, the underlying facts, and the Toohill factors, I’m not convinced that the sentence that I ordered was excessive or that there’s been anything shown that would suggest leniency should be granted in this case.

(Tr., p.64, Ls.9-15.) The state submits Corning has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpt of the sentencing hearing transcript, which the state adopts as its argument on appeal. (Appendix A.)

Conclusion

The state respectfully requests this Court to affirm the district court's decision to deny Corning's Rule 35 motion for a reduction of sentence.

DATED this 2nd day of November, 2015.

/s/ _____
JESSICA M. LORELLO
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 2nd day of November, 2015, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

SALLY J. COOLEY
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ _____
JESSICA M. LORELLO
Deputy Attorney General

APPENDIX A

1 years old. I'm tired of prison. I'm tired of jail. I
2 really don't know what to say, sir, other than I'm done.
3 That's all I have.

4 THE COURT: Thank you.

5 Mr. Corning, on your plea of guilty I
6 hereby find you guilty. In an exercise of my discretion
7 in sentencing, I've considered the Toohill factors,
8 including the nature of the offense and the character of
9 the offender and any mitigating and aggravating factors
10 and information related thereto.

11 In fashioning a sentence, I'm driven with
12 the objectives of, first and foremost, protecting
13 society, achieving deterrence, rehabilitation, as well
14 as need for retribution for punishment. I've reviewed
15 the extensive PSI materials, including domestic violence
16 evaluation that was ordered by this court.

17 Certainly the court is concerned when a
18 defendant blatantly disregards orders of this court.
19 It's even more concerning when that takes place in
20 connection with orders that are designed to protect
21 other people, other members of society.

22 What is concerning about this case and
23 aggravating about this case is not just the no-contact
24 order violations, but the setting in which they arise
25 and the background the defendant brings with him into

1 court today. By that I mean that the no-contact order
2 was issued in relation to domestic violence charges,
3 domestic battery charges. The domestic violence
4 evaluation indicates a high likelihood or high risk to
5 reoffense. The LSI score of 42 is extremely high,
6 indicating a high likelihood of a risk to reoffend.

7 The defendant's prior criminal history is
8 very troubling. It's littered with crimes of violence,
9 domestic violence crimes related to spouse and
10 significant others and members of household. And I hope
11 that as a society we have gotten to the point we're not
12 going to tolerate these types of crimes anymore.

13 So Mr. Corning you've received most of
14 what the Department of Corrections has to offer in the
15 way of treatment over the years. You've been in and out
16 of custody for some time.

17 Given your disregard for the Court's order
18 that have led to this felony and misdemeanor
19 convictions, as well as the misdemeanor battery
20 conviction, and the concern that I have of your risk to
21 reoffend, as evidenced by the evaluation and the LSI and
22 the information that goes into that, particularly I'm
23 troubled by your criminal history.

24 You should have learned by now that you
25 have run out of chances; that when you violate the law

1 in a way that you have, that the opportunity for
2 community supervision has by and large passed you by.

3 I'm significantly concerned that there is
4 a very high risk if I were to suspend sentence that you
5 would commit another crime, and I'm very concerned that
6 that crime would be directed against an individual in a
7 violent way, based on your history.

8 Again, I'm concerned that treatment in the
9 community is inappropriate, given your history and given
10 the amount of treatment that you've already been
11 provided by the Department of Corrections. I'm
12 concerned that given your history in particular, a
13 suspended sentence would depreciate the seriousness of
14 your crime, and I believe that a suspended sentence
15 would not work as an appropriate deterrent to you, in
16 particular, and to others similarly situated.

17 Of course your criminal record I've
18 already touched on, which includes the fact that you
19 were eligible for an Information Part II based on your
20 prior convictions.

21 This is not to say that you as an
22 individual are without worth, that you couldn't and
23 shouldn't formulate hope, that you would be able, at
24 some point, to lead a life that does not involve
25 reoffending, that does not involve injuring those who

1 you purport to be closest to, members of your household,
2 that you not commit violence against women, frankly,
3 that you have a meaningful live that is productive, but
4 I don't think you're ready for that now. I think you
5 need to formulate a plan to work on that, and I think
6 you need the assistance of the Department of Corrections
7 to help you formulate that plan.

8 Based upon the Toohill factors, as well as
9 factors the court otherwise considers in determining
10 whether or not to impose a sentence or to allow
11 treatment in the community, I am convinced that
12 imposition of sentence is the appropriate and justified
13 sentence in this case. And therefore, I hereby sentence
14 you to the Idaho State Board of Corrections under the
15 Unified Sentencing Laws of the State of Idaho for an
16 aggregate term of five years. The court specifies a
17 minimum period of confinement of two-years fixed,
18 followed by a subsequent indeterminate period of custody
19 of three years.

20 I remand you to the custody of the Sheriff
21 of the county to be delivered to the proper agent of the
22 State Board of Corrections in execution of the sentence.
23 Any bail is exonerated and credit will be given for 280
24 days served prior to the entry of judgment. That's on
25 the felony charge.